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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 967 90

ANNA S. BAINBRIDGE, PETITIONER,

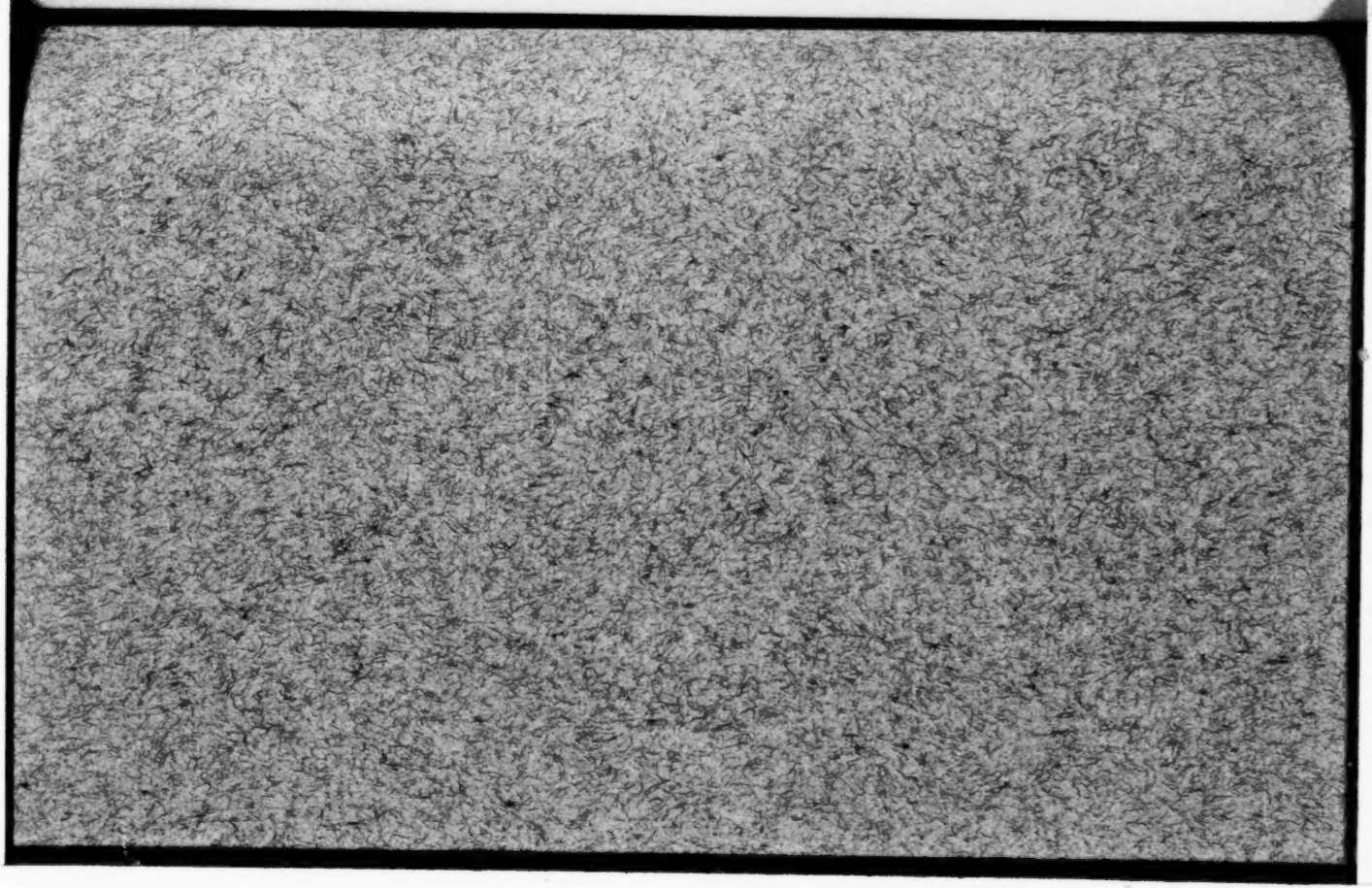
vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

(36,781)



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SUPREME COURT OF THE UNITED STATES.

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ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Anna S. Bainbridge respectfully shows to this Honorable Court:

A.

The Question Presented.

May the venue provision of Section 33 of the Jones Act of 1920, which directs—

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which its principal office is located."

be properly construed so as to apply to state courts, when actions pursuant to the section are brought therein, or is it confined in its application to federal courts?

B.

Statute Involved.

The Merchant Marine Act of 1920, popularly known as the "Jones Act," Section 33; U. S. Code, Title 46, Section 688; 41 Statutes at Large, 1007:

> "Any seaman who shall suffer personal injuries in the course of his employment may, at his election, maintain an action at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which its principal office is located.*"

C.

Statement of Matter Involved.

Your petitioner, Anna S. Bainbridge, brought an action in the Court of Common Pleas, No. 4, of Phila-

delphia County, on December 17, 1929, pursuant to Section 33 of the Jones Act.

Your petitioner was on and prior to December 30, 1927, employed by the respondent as a seaman on board the latter's vessel, the S. S. Chatham. While the "Chatham" was moored to the respondent's wharf in Philadelphia County on the above date, your petitioner, while engaged in the course of her employment, was caused to fall and to receive very serious and permanent injuries by reason of the negligence of the respondent, her employer.

Your petitioner is, and at the times above named was, a citizen and resident of Philadelphia County, Pennsylvania. The respondent is a Maryland corporation, with its principal office in Baltimore, Maryland. It is registered to do business in Pennsylvania as a foreign corporation, and in that State its principal place of business is in Philadelphia.

The respondent presented a petition for a rule to show cause why your petitioner's action should not be dismissed for want of jurisdiction on the ground that the respondent's principal office was located in Baltimore, Maryland, and that by virtue of the last sentence of the Jones Act, it could be sued only in that city (R. 5a), even though the accident occurred in, and its principal place of business in Pennsylvania was located in, Philadelphia County.

The Common Pleas Court dismissed your petitioner's action by making absolute the rule (R. 8a). Your petitioner appealed to the Supreme Court of Pennsylvania, assigning as error the order of the

Common Pleas Court (R. 11). On February 3rd, 1932, the Supreme Court affirmed the order of the Common Pleas Court (R. 13). Your petitioner presented a petition for reargument, which was refused by the Supreme Court on March 14th, 1932 (R. 16).

If this action is not properly brought, then your petitioner is without any redress for the personal injuries suffered by her, since another action at this time would be barred by the two year statute of limitations.

D.

Reasons for Allowance of Writ.

1. The Supreme Court of Pennsylvania construed the Act of Congress (The Merchant Marine Act of 1920, Section 33; U. S. Code, Title 46, Section 688; 41 Statutes at Large, 1007), to mean that the venue provision therein applies to State courts, as well as to Federal courts. This Court has not as yet construed that act in this respect. The case involves a decision on an important question of Federal law not yet decided by this Court.

2. There is a conflict in the decisions upon the question presented among Federal and State courts. Some courts hold the application of the venue provision restricted to Federal courts, and others hold it applicable to both Federal and State courts.

3. This Court has repeatedly held that, when a Federal cause of action is enforced by an action in a State court, the jurisdiction and limitations of that court and

the procedure of the action therein are to be determined solely by the authority creating that court, and that it is beyond the power of Congress to regulate the jurisdiction of State courts, or the procedure of actions therein. The Supreme Court of Pennsylvania has said that Congress has, by the last provision of the Jones Act, sought to regulate jurisdiction and procedure not only of Federal courts, but also of State courts. If this interpretation be correct, then, in the light of the decisions of this Court, the Jones Act is in that respect unconstitutional.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket, Anna S. Bainbridge, appellant, *vs.* Merchants & Miners Transportation Company, a corporation, January Term, 1932, No. 136, and that the said order and judgment of the Supreme Court of Pennsylvania may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

ANNA S. BAINBRIDGE,
By EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 967

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

One opinion was delivered by the Common Pleas Court. It was written by Common Pleas Judge Thomas D. Finletter. It appears on page 8a of the record and is reported in conjunction with the opinion of the Supreme Court. The opinion of the Supreme Court of Pennsylvania (per curiam) was filed February 3, 1932, and appears on page 13 of the record.

It is reported in 306 Pa. 205 (Advance Reports, April 15, 1932), and in 159 Atlantic 19 (Advance Reports, March 26, 1932).

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (*b*) of the Judicial Code, as amended by the Act of February 13, 1925, ch. 229 (43 Statutes 963; 28 U. S. C. A. 344).

2. The judgment of the Supreme Court of Pennsylvania was entered February 3, 1932. Petition for reargument was denied March 14, 1932.

3. It was contended by your petitioner in the Common Pleas Court that the venue provision of the Jones Act was limited to Federal courts. The Common Pleas Court held it applied to State, as well as to Federal, courts (R. 10a). This was assigned as error in the Supreme Court (R. 12). The State Supreme Court affirmed the order of the Common Pleas Court (R. 13).

4. The question presented is a proper one for the exercise by this Court of its supervisory powers.

Talbot v. *Sioux City First Nat. Bank*, 185 U. S. 172.

Jones Nat. Bank v. *Yates*, 240 U. S. 541.

Tazewell v. *State ex rel. Sullivan*, 272 U. S. 613.

The petition is timely, the petition for reargument having bene denied by the Pennsylvania Supreme Court on March 14, 1932:

Citizen's Bank of Michigan City v. *Opperman*, 249 U. S. 448.

III.

The Facts.

The facts are stated in the petition, page 2. We emphasize that your petitioner was, at the time of the accident and at the time the action was brought, a citizen and resident of Philadelphia County, and that the accident occurred in Philadelphia County.

IV.

Specification of Error.

The Supreme Court of Pennsylvania erred in construing the venue provision of Section 33 of the Jones Act to apply to State courts.

V.

ARGUMENT.

Summary of Argument.

Point A. The question presented involves an important question of Federal law not as yet decided by this Court.

Point B. There is a conflict of decisions among Federal and State courts upon the question presented.

Point C. The construction placed upon the Jones Act by the Pennsylvania Supreme Court makes the statute in that respect unconstitutional.

POINT A.

The case involves a decision on an important question of Federal law not decided by this Court.

The last sentence of Section 33 of the Jones Act was first presented to this Court for construction in *Panama Railroad Co.* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748, where it was contended that the statute, by that provision, conferred an exclusive jurisdiction of the subject matter upon the Federal district court designated. This Court construed the statute as not to confer jurisdiction over the subject matter involved but only to regulate the venue of actions brought in Federal district courts. The case involved an action in a Federal court of a district other than that in which the employer's principal office was located.

The next contention as to the construction of the statute was made in *Engel* v. *Davenport,* 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813, and in *Panama Railroad Co.* v. *Vasquez,* 271 U. S. 557, 46 S. Ct. 410, 70 L. Ed. 813, and was that the provision conferred an exclusive jurisdiction on Federal courts. This Court held that State courts have concurrent jurisdiction to enforce the causes of action created by the statute, because, by the Judiciary Act of 1789, there is saved to suitors in all cases involving admiralty and maritime jurisdiction the right of a common law remedy where the common law is competent to give it.

The identical question here raised as to whether or not the provision regulates the venue in State courts was presented to this Court for review and determina-

tion when a certiorari was granted in *Tazewell, petitioner,* v. *State ex rel. Sullivan,* 272 U. S. 613, but upon argument it was disclosed that in that case the question was moot and the certiorari dismissed for that reason in 277 U. S. 575. In this case, however, the question is squarely presented. Since the two-year statute of limitations has expired the petitioner is without any remedy to redress the injuries suffered if this action is not sustained, and the decision of the courts below involved but one question and that the construction of the last sentence of the section.

The question has, therefore, not, as yet, been determined by this Court. It is of great importance to thousands of merchant seamen and their dependents, and the uncertainty as to what course they shall pursue in prosecuting the right of action granted them by the Merchant Marine Act is a great present and potential source of confusion. It should have a final determination by this Court so that their rights may be clarified.

POINT B.

Conflict Among Decisions.

The following cases hold that the venue provision is limited in its application to Federal courts, and that when an action is brought, pursuant to the statute, in State courts the venue is to be determined by the laws of the State regarding actions against foreign corporations:

Lynott v. *Great Lakes T. Co.,* 234 N. Y. 626, 202 N. Y. App. Div. 210.

Pattronne v. *Howlett,* 237 N. Y. 626.

Rodigrues v. *Transmarine Corp.*, 216 N. Y. App. Div. 337.

Bennet v. *Connelly*, 122 N. Y. Misc. 149.

State ex rel. Sullivan v. *Tazewell*, 123 Ore. 326.

The following cases hold that the venue provision applies to both Federal and State courts:

Patterson v. *Standard Oil of N. J.*, 41 F. 2nd, 291.

Cook v. *Alaska S. S. Co.*, 8 F. 2nd, 291.

Villiard v. *Emergency Fleet Corp.*, 1 F. 2nd, 570.

Weinbroer v. *Emergency Fleet Corp.*, 299 F. 2nd, 972.

A seaman who is injured is faced with the necessity of suing in some court, and with the conflict presented his rights are of little moment. Under the decision of the Pennsylvania Supreme Court he cannot sue in a court of the State in which the accident occurred, if that court should choose to follow the interpretation placed upon the statute; for practical purposes he is confined to the Federal court of the district designated. The confusion upon the question and the conflict of the decisions should be cleared by a determination of this Court, so that the rights of seamen may be made certain.

POINT C.

The construction placed upon the statute by the Court below makes the Act in that respect unconstitutional.

This Court has repeatedly declared that when a cause of action arising under and by virtue of Federal

enactment is enforced in a State court, it is by reason of the supremacy clause of the United States Constitution, and that the jurisdiction of that court, its powers, limitations and competency, and the procedure of actions therein, are determinable solely by the authority conferred by the Government creating it; and that it does not for such purpose become a Federal court and subject to regulation as such by Congress, but retains its identity and individuality as a court of the State creating it.

In *Mondou* v. *N. Y., N. H. & H. R. Co.*, 223 U. S. 1, the question arose whether or not a State court could refuse to enforce a cause of action arising under the Federal Employers' Liability Act. The court stated the principle upon which Federal causes of action are enforceable in State courts, p. 59:

> "We conclude that rights arising under the act in question may be enforced as of right in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion."

This principle was the basis of this Court's decisions in:

Martin v. *Hunter's Lessee*, 1 Wheat. 304, 330;
Houston v. *Moore*, 5 Wheat. 1, 27-28;
Ex parte McNiel, 13 Wall. 236, 243;
Claflin v. *Houseman*, 93 U. S. 130.

In the Mondou case, this Court, speaking through Mr. Justice Van Devanter, said, page 56:

> "Because of some general observations in the opinion of the Supreme Court of Errors, and

> to the end that the remaining ground of decision may be more accurately understood, we deem it well to observe that *there is not here involved any attempt by Congress to regulate the jurisdiction of State courts or to control or affect their modes of procedure,* but only a question of the duty of such court when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws to take cognizance of an action to enforce a right of civil recovery, arising under an act of Congress, and susceptible of adjudication according to the prevailing modes of procedure."

The decision of this Court which most clearly shows the error in the decision of the Supreme Court of Pennsylvania is *Minneapolis & St. L. R. R.* v. *Bombolis,* 241 U. S. 211, where it was contended that the Seventh Amendment to the Federal Constitution, requiring issues of fact to be determined by a unanimous verdict, cast upon Congress the duty of subjecting every right created by it to a limitation that such right should not be enforced in any court whatever, whether created by Congress or not, unless the court enforcing the right becomes bound by the restriction of the amendment. The case involved the enforcement of the Federal Employers' Liability Act in a Minnesota State court in which a five-sixth verdict was permitted under State law. This Court clearly stated that such a contention granted to Congress a power it did not possess, and that a State court entertaining a cause of action arising under Federal law retained its individuality as a

court of the State creating it, and applied its own rules of procedure, and was subject only to the limitations placed upon its jurisdictional powers by the authority creating it; and that it did not for such purpose become a Federal court and subject to regulation as such by Congress.

The Supreme Court of Pennsylvania has said that Congress has, by the last provision of Section 33 of the Jones Act, sought to regulate jurisdiction and procedure not only of Federal courts, but also of State courts. If this interpretation be correct, then, in the light of the decisions of this Court, the Jones Act is in that respect unconstitutional.

V.

Conclusion.

Your petitioner respectfully submits that the final determination by this Court as to the proper construction of the Jones Act is of the utmost importance to the thousands of merchant seamen and their dependents who must seek redress under that statute. The decision of the Pennsylvania Supreme Court adds further uncertainty to the confusion already existing, and the construction which that court has given to the statute raises a very real doubt as to its constitutionality.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power, in order that the proper construction to be placed upon the Jones Act shall be finally

determined, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Pennsylvania Supreme Court and finally reverse it.

EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

(2046)